

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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**In the Matter of**

**Petition of the  
Verizon Telephone Companies  
for Declaratory Ruling  
or, Alternatively, for  
Interim Waiver with Regard to  
Broadband Services Provided via  
Fiber to the Premises**

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**WC Docket No. 04-242**

**To the Commission:**

**COMMENTS OF THE  
UNITED STATES INTERNET  
INDUSTRY ASSOCIATION ("USIIA")**

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## **SUMMARY OF FILING**

The US Internet Industry Association ("USIIA"), the leading national trade association of companies engaged in Internet commerce, content, and connectivity; submits on behalf of its members and the industry it serves these comments in response to the petition for declaratory ruling or, alternatively, interim waiver and conditional petition for forbearance under 47USC § 160(c), with regard to broadband services provided via fiber to the premises.

USIIA believes that the approval of this petition will have a beneficial effect on the capability to deliver broadband Internet services to America in support of established national policies for broadband deployment, and will provide substantial benefits to consumers.

USIIA requests that the Federal Communications Commission act with all due speed to approve the Petition for Declaratory Ruling filed by Verizon under WC Docket No. 04-242.

## **STATEMENT OF STANDING**

USIIA is a national trade association of competitive companies engaged in Internet commerce, content and connectivity. Its members constitute a cross-section of the Internet industry, providing consensus on policy issues that breach the competitive interests of any single member or segment of the industry.

USIIA members, through their annual dues and membership status, entrust the Association to represent their interests before regulatory and legislative bodies at the international, national and local levels. The Association's positions on issues represent a consensus of the opinions of its members, expressed through the USIIA Public Policy Committee, membership in which is open to all members in good standing; and through its Board of Directors, elected from among the membership. As the appointed representative of its members charged with advancing their

economic interests and assisting in achieving and maintaining their legal and competitive parity, USIIA has standing to file these comments.

USIIA has no financial interest in the outcome of the proceedings. The comments presented are based on a consensus of the best interests of the Internet industry and its members, and are not subject to change or withdrawal due to any contracts, agreements, competitive pressures, market valuations or corporate strategies.

## **STATEMENT OF FACTS AND BACKGROUND**

On June 28, 2004, Verizon Telephone Companies (“Verizon”) filed two petitions with the Commission regarding its deployment of fiber-to-the-premises (FTTP) infrastructure. In its first petition, Verizon requests that the Commission either issue a declaratory ruling regarding broadband service provided via FTTP or, alternatively, waive its common carrier and Title II rules for an interim period in the same manner as currently applied to cable modem service providers.<sup>1</sup>

In its second petition, Verizon requests that, in absence of a declaratory ruling, the Commission should exercise its forbearance authority pursuant to section 10 of the Communications Act of 1934, as amended,<sup>2</sup> to provide interim regulatory relief for such services until an appropriate regulatory framework for broadband services has been established.<sup>3</sup> In support of its petitions, Verizon asserts that it plans to offer FTTP broadband services under

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<sup>1</sup> *Petition of the Verizon Telephone Companies for Declaratory Ruling, or, Alternatively, for Interim Waiver with Regard to Broadband Services Provided via Fiber to the Premises*, WC Docket No. 04-242 (filed June 28, 2004) (Verizon Declaratory Petition).

<sup>2</sup> *See* 47 U.S.C. § 160 *et seq.* (2002).

<sup>3</sup> *Conditional Petition of the Verizon Telephone Companies for Forbearance Under 47 U.S.C. § 160(c) with Regard to Broadband Services Provided via Fiber to the Premises*, WC Docket No. 04-242 (filed June 28, 2004) (Verizon Forbearance Petition).

circumstances that parallel those at issue in the Commission's *Cable Modem Declaratory Ruling*.<sup>4</sup> Like those companies, Verizon states that it intends to provide video, high-speed Internet access, and voice services over its FTTP network, and to obtain cable franchises for its video offerings. Accordingly, Verizon argues that the Commission should afford FTTP broadband services the same regulatory treatment as cable modem services.<sup>5</sup>

In the alternative, Verizon requests waivers and/or interim forbearance to create a level regulatory playing field for FTTP broadband services and cable modem services until the Commission has completed its consideration of appropriate rules for broadband services. Verizon argues that the need for its relief is time sensitive as Verizon is nearing deployment of its multi-faceted broadband offering in less than two months.<sup>6</sup>

Nor is Verizon alone in its plans to deploy such fiber networks and capabilities. SBC Communications has defined a strategy to drive fiber deeper into its networks to power high-speed, IP-based local connections, resulting in an incremental investment of \$4 billion to \$6 billion over five years to deploy the network and make advanced services available to millions of customers in the SBC service territory. BellSouth has an extensive network of fiber throughout its service area, and is currently conducting experiments with "Fiber To The Home" in the Atlanta metropolitan market. Nationally, the number of "intelligent communities" operating their own fiber optic networks is increasing.

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<sup>4</sup> See Verizon Declaratory Petition at 2; *see also* Declaratory Ruling and Notice of Proposed Rulemaking, *Inquiry Concerning High-Speed Access to Internet over Cable and Other Facilities* ("Cable Modem Declaratory Ruling"), 177 FCC Rcd 4798, 4847-48, para. 95 (2002), *vacated in part*, *Brand X Internet Servs. v. FCC*, 345 F.3d 1120 (9<sup>th</sup> Cir. 2003), *petitions for cert. pending*.

<sup>5</sup> Verizon Declaratory Petition at 2.

<sup>6</sup> See Verizon Forbearance Petition at 1-2.

This deployment of advanced capabilities and high-speed networks is limited, however, by an environment marked by uncertainty, regulatory disparity and disincentives to investment. The Verizon filings are an effort, on behalf of itself and the broadband industry, to clarify this environment and remove elements of regulatory disparity.

## **COMMENTS OF THE USIIA**

### **1. The Commission should establish a single set of rules to govern identical services, regardless of the technology employed in the delivery of those services.**

Although the Commission has not yet specifically addressed the regulatory status of broadband services in the context of the FTTP architecture, it has addressed the rules governing broadband services offered by a company that offers high-speed Internet access together with cable video and voice services over its network. Specifically, the Commission addressed this issue in the context of cable modem service in its *Cable Modem Declaratory Ruling*. The Commission on its own motion waived the common-carrier rule that would otherwise require cable companies to unbundle the transmission component of their information services and offer it on a stand-alone basis under tariff at cost-based rates. In addition, the Commission determined that if cable companies offer broadband transmission to ISPs, they may do so on an individual-case basis rather than a common-carriage basis.

The services to be provided via Fiber-To-The-Home (FTTH) network include video, high-speed Internet access, and voice services. The Commission should confirm that in the event of virtually identical offerings, the same rulings apply to FTTP broadband offerings by Verizon and other vendors.

**2. Should the Commission elect not to make a declaratory ruling, it should grant interim waivers of any Title II requirements, or forbear such requirements, for FTTH broadband.**

Deployment of FTTH broadband services are already underway nationally, even though the regulatory regime for broadband services has not been finalized even for a stand-alone transmission capacity. Until the Commission completes its pending broadband proceedings, interim waivers should be issued for Title II requirements in order to allow providers of FTTH broadband services the ability to create innovative, non-cost-based pricing schedules similar to those already in use by cable companies and Internet companies.

**3. Granting an Interim Waiver Is Appropriate and Consistent with Commission Precedent.**

“Any provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefore is shown.”<sup>7</sup>.. The same special circumstances that led the Commission to waive key aspects of its common-carrier rules for cable modem service – namely, that these rules could stifle emerging facilities-based competition, undermine the goal of encouraging the deployment of advanced services, and burden new technologies with outdated regulatory categories – warrant similar treatment for the FTTH broadband services at issue here.

**4. Likewise, the Requirements for Forbearance Pending Completion of the Ongoing Rulemakings Are Satisfied.**

The Commission has not just the power but the duty, under section 10 of the Communications Act, to forbear from enforcing Title II requirements if the Commission determines that: (1) the enforcement of such requirements is not necessary “to ensure that

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<sup>7</sup> 47 C.F.R. § 1.3

classifications, or regulations” for the carrier or service in question “are just and reasonable and are not unjustly or unreasonably discriminatory”; (2) enforcement of such requirements is necessary “for the protection of consumers”; and (3) forbearance is consistent with the public interest.<sup>8</sup>

The Commission has already tentatively concluded that forbearance from Title II regulation of cable modem service would satisfy all three requirements “because cable modem service is still in its early stages; supply and demand are still evolving; and several rival networks providing residential high-speed Internet access are still developing.” The developing state of the market, the availability of competing facilities, and the negative impact on investment incentives that application of common-carrier regulations would entail all support interim regulatory relief for FTTP broadband just as they did for cable modem service.

## **CONCLUSION**

The US deployment of advanced broadband services has been crippled by the misapplication of competitive rules intended for the century-old voice telephone system. The rules have created market uncertainty, stifling both innovation and investment. It is critical that these rules are not also misapplied to other emerging services and networks, including Fiber-To-The-Home, if the US is to meet the stated goal of the Administration to bring ubiquitous broadband services to the nation.

For this reason, USIIA believes the Commission should grant the requested relief pending completion of its ongoing broadband rulemakings, either by issuing a declaration confirming that

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<sup>8</sup> 47 U.S.C. § 160



the FTTP broadband services at issue here are subject to the same regulatory treatment afforded to cable modem service in the *Cable Modem Declaratory Ruling*, or by granting a waiver or forbearance to the extent necessary to ensure timely and effective deployment of FTTH technologies and services to consumers.

Respectfully submitted,

July 20<sub>2</sub>, 2004

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